



## Fresh Tracker – Terms of Use

Welcome to Fresh Tracker, a proof of delivery, pallet tracking and forklift tracking solution (the “**Service**”, as more fully described below). The Service is owned and operated by Fresh Computer Systems Pty Ltd and these Terms of Use will govern the relationship between you and Fresh Computer Systems Pty Ltd, as applicable (“**Fresh**”).

PLEASE READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS (THE “**TERMS**” OR “**TERMS OF USE**”), BECAUSE THEY, ALONG WITH OUR PRIVACY POLICY AND OUR COPYRIGHT POLICY, CONSTITUTE A BINDING AGREEMENT BETWEEN YOU, THE INDIVIDUAL OR THE ENTITY ACCESSING OR USING THE SERVICE, AND FRESH. BY ACCESSING THE SERVICE OR BY USING IT IN ANY MANNER, YOU SIGNIFY YOUR ACCEPTANCE OF THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE SERVICE.

From time to time, Fresh may change the Terms to meet technical, operational and legal changes. Fresh will post a notice about changes made to the Terms on Fresh's website, and may send you a notice by email a reasonable time before the changes take effect. You may choose to deny the amended Terms and if Fresh does not agree that such amended terms will not apply to you, terminate your account. By continuing to use your account with the Service after the new changes have taken effect, you indicate your agreement to the amended Terms.

### About the Service

The Service is a proof of delivery, pallet tracking and forklift tracking platform.

From time to time, Fresh may modify or enhance the Service, and may offer additional tools and features, free-of-charge or subject to additional fees. The additional tools and features may be governed by additional or different terms of service.

### Grant of Right

Subject to these Terms and to the payment of fees, if applicable, Fresh grants you a worldwide, limited, non-exclusive, revocable, non-transferable, non-sublicensable right to use the Service. You may not use the Service for any other purpose except as explicitly provided in these Terms.

### User Accounts

When you sign up, Fresh will ask you to create user accounts for Fresh Tracker, including an email address, first name and last name for each account.

To log in, a user must enter the email address and the password. Once logged in, users can change their passwords at any time.

You may terminate a user account at any time by contacting Fresh via standard support channels. Following the termination of an account, the user will no longer be able to access the Service.

Notwithstanding any remedies that may be available to Fresh under any applicable law, Fresh may temporarily or permanently deny, limit, suspend, or terminate a user account, prohibit a user from accessing the Service, remove user content and take technical and legal measures to keep a user off the Service, if Fresh determines in its sole discretion that the user:

- a) abused their rights to use the Service;
- b) breached the Terms;
- c) violated any applicable law, rule, or regulation;
- d) performed any act or omission which is harmful or likely to be harmful to us, or any other third party, including other users or providers of the Service.

### Acceptable Use of the Service

When using the Service, you will abide by the applicable laws, rules and regulations, and by any usage guidelines Fresh may convey to you from time to time.

You may not access or use the Service for any illegal or abusive purposes, or to develop or create a similar or competitive product or service to the Service. You will be responsible for all acts and omissions associated with your access and use of the Service and the access and use of the Service by employees, agents, contractors, end-users and any other third party who may access or use the Service on your behalf, or at your permission (“**Authorised Users**”).

You may allow your Authorised Users to upload, store, administrate, edit, deliver, make available and distribute content (“**Contributed Content**”), subject to any content upload technical and safety guidelines and limitations which Fresh may inform you of from time to time. Fresh may, but is under no duty to, review all Contributed Content and remove or block access to such content, as more fully described below.

Any use of your account is subject to your sole responsibility. You will not, and be responsible that your Authorised Users will not, access and use the Service (including as to upload or transmit any Contributed Content) for any illegal, harmful, fraudulent or offensive purpose, or to transmit, store, display, distribute or otherwise make available content that is infringing upon any third party rights, illegal, harmful, indecent, obscene, defamatory, libellous, harassing, threatening, fraudulent, offensive or inconsistent with the generally accepted practices of the Internet community, including without limitation promoting or facilitating pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, spamming, make-money-fast schemes, Ponzi and pyramid schemes, phishing, or pharming, and use of content or technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms or time bombs.

## Privacy

You represent that your disclosure of privacy practices to Authorised Users will cover the Service's use of personal information pursuant to the Service's privacy policy (see [Fresh Tracker Privacy Policy](#)).

## Content Removal

Fresh may report any Contributed Content and share user identifiable information, if Fresh believes in its sole discretion that such content is illegal or abusive or may violate any third party rights.

Fresh respects the rights of its users and any other person. If you believe that any of your rights, other than copyrights, are abused on the Service, please contact Fresh at [support@freshcomputers.com.au](mailto:support@freshcomputers.com.au). Fresh may ask you to provide additional information to process your complaint. Fresh will make reasonable efforts to review your complaint and respond promptly. Fresh will not respond to anonymous complaints.

Fresh may remove any Contributed Content if Fresh believes, in its sole discretion, or receives a notice from a third party, that such content may violate any third party rights. Prior to removing the said content, Fresh will block access to it and provide you a 48 hours prior notice before removing the said content without maintaining any backup copy.

## Service Fees

Fresh offers transaction-based service fees for the Service. From time to time, Fresh may change the Service fees, upon reasonable prior notice that Fresh inform you of via standard support channels.

Fresh will provide you with a monthly transaction listing and invoice to be payable on standard Fresh terms.

You will pay all fees and taxes in a timely manner and in compliance with Fresh's pricing schedule and you will reimburse Fresh for any interest and collection costs resulting from overdue payments.

Upon failure to make any payment, and following a seven (7) days prior notice of due payments sent to you, Fresh may remove, disable or terminate your access to the Service. You waive any and all claims against Fresh and anyone on Fresh's behalf in connection therewith.

## Intellectual Property

Except for your Contributed Content, all rights, title and interest in and to the Service, including any intellectual property rights, whether registered or not, and any goodwill associated therewith, are owned by, or licensed to Fresh. Unless as expressly provided herein, these Terms do not grant you any rights to patents, copyrights, trademarks (whether registered or unregistered), trade names, trade secrets, domain names or any other rights, functions or licences with respect to the Service and you may not use the Service for any other purpose without Fresh's prior, express written authorization.

Fresh does not claim ownership over Contributed Content. However, you grant Fresh permission to use your Contributed Content, for the purposes of providing, developing and supporting the Service. You grant Fresh permission to use your Company name and logo on the Fresh website and any Fresh issued publications. If you wish to decline Fresh's use of your name and logo, please contact Fresh at [support@freshcomputers.com.au](mailto:support@freshcomputers.com.au). You acknowledge that Fresh may adjust and modify Contributed Content, per your requests.

## Confidentiality

“**Confidential Information**” means any information furnished or made available by you or your Authorised Users, that is identified as “confidential” or “proprietary,” either by legend on written or electronically stored material, or which ought reasonably to be recognised as confidential or proprietary by virtue of its nature or the circumstances of its disclosure.

Fresh will maintain strict confidentiality of your Confidential Information and will not use, disclose or have your Confidential Information disclosed, directly or indirectly to any third party, except as specifically required to provide you the Service, or subject to your prior permission. Fresh will take precautions to maintain the confidentiality of your Confidential Information with the same degree of care as to Fresh's own Confidential Information, but in no case less than reasonable care. Upon termination of this agreement, Fresh will use commercially reasonable efforts to delete all copies of your Confidential Information that is stored on Fresh's system or any Fresh affiliate's system, except for retaining data for legitimate business purposes or as required under the applicable law, including under tax related requirements, account settling, record keeping, archiving and legal issues

The foregoing will not be considered as your confidential information:

- (a) information already known to Fresh without an obligation of confidentiality
- (b) information that is or becomes publicly known other than through a breach by Fresh
- (c) information that is independently developed by Fresh

If Fresh is compelled by law to disclose your confidential information, Fresh will provide you a prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at your cost, if you wish to contest the disclosure.

## Disclaimer of Warranty

YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE IS PROVIDED FOR USE "AS IS", WITHOUT ANY WARRANTIES OF ACCURACY, RELIABILITY, LIKELY-RESULT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY OR IT BEING UP-TO-DATE. USE OF THE SERVICE IS AT YOUR SOLE AND EXCLUSIVE RISK.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, FRESH AND ITS AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICE, THE ACCURACY, RELIABILITY, ADEQUACY OR COMPLETENESS OF THE SERVICE OR ANY OTHER MATERIAL PROVIDED BY ANY LINK TO ANOTHER WEBSITE OR SERVICE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, LIKELY-RESULT, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICE WHETHER MADE BY FRESH AND ITS AFFILIATES' EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THESE TERMS, WILL BE DEEMED TO BE A WARRANTY BY FRESH OR ITS AFFILIATES FOR ANY PURPOSE, OR GIVE RISE TO ANY LIABILITY OF FRESH OR ITS AFFILIATES WHATSOEVER.

## Limitation of Liability

FRESH, AND FRESH'S EMPLOYEES, DIRECTORS, SHAREHOLDERS, ADVISORS OR ANYONE ACTING ON FRESH'S OR ITS AFFILIATES' BEHALF WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON WITH RESPECT TO THE SERVICE'S PROPERTIES, ABILITIES, LIMITATIONS, FITNESS TO YOUR NEEDS, OR WITH RESPECT TO ANY CONTENT AVAILABLE ON THE SERVICE, THAT YOU RELY ON.

FRESH, AND FRESH'S EMPLOYEES, DIRECTORS, SHAREHOLDERS, ADVISORS OR ANYONE ACTING ON FRESH'S OR ITS AFFILIATES' BEHALF, WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE, OR ANY OTHER DAMAGE, AND LOSS (INCLUDING LOSS OF PROFIT AND LOSS OF DATA), COSTS, EXPENSES AND PAYMENTS, EITHER IN TORT, CONTRACTUAL, OR IN ANY OTHER FORM OF LIABILITY, ARISING FROM, OR IN CONNECTION WITH THE USE OF, OR THE INABILITY TO USE THE SERVICE, OR FROM ANY FAILURE, ERROR, OR BREAKDOWN IN THE FUNCTION OF THE SERVICE, OR FROM ANY FAULT OR ERROR MADE BY FRESH'S STAFF OR ANYONE ACTING ON FRESH'S BEHALF, OR FROM YOUR OWN OR YOUR AUTHORIZED USERS RELIANCE ON THE CONTENT OR ON MATERIAL ORIGINATING FROM THIRD PARTIES, OR FROM ANY COMMUNICATION WITH FRESH OR WITH OTHER USERS IN CONNECTION WITH THE SERVICE, OR FROM ANY REPORTING OF CONTRIBUTED CONTENT TO THE LAW ENFORCEMENT AUTHORITIES OR ANY OTHER AUTHORITY – WHETHER OR NOT FRESH HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, COSTS, EXPENSES OR PAYMENTS.

Without derogating anything from the above, Fresh and its affiliates' total liability under this agreement in contract, tort, negligence, pre-contract or other representations or otherwise arising out of, or in connection with this agreement or the performance or observance of its obligations under this agreement, and every applicable part of them will be limited to



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an amount equal to the total amount actually received by Fresh during the three (3) months before such loss or damage first occurred.

### Indemnification

You will indemnify, defend and hold harmless, Fresh, Fresh's affiliates and Fresh and Fresh's affiliate's employees, directors, shareholders, advisors or anyone acting on Fresh's behalf with respect of any claim, demand, damage, loss, loss of profit, payment or expense, including reasonable attorney fees Fresh incur in connection with an alleged or actual breach of these Terms or an alleged or actual unlawful or tortuous action or inaction with respect to the Service by you or by anyone on your behalf. Such indemnity will include, but will not be limited to, legal expenses and attorney fees.

### Governing Law and Jurisdiction

These Terms, the Service or any dispute arising out of or related thereto, will be governed solely by the laws of the state of Queensland in Australia.

### General

These Terms along with the Privacy Policy specified constitute the entire agreement between you and Fresh with respect to the access and use of the Service and supersede any and all agreements, negotiations and understandings, whether written or oral, about the Service, except that if you have separately entered with Fresh into an online or written agreement or subscription form that incorporates by reference these Terms, any terms of such agreement or subscription form that add to, conflict with or change, these Terms shall prevail.

No waiver, concession, extension, representation, alteration, addition or derogation from these Terms will be effective unless effected in writing and expressly.

### Severability

If any provision of these Terms is held by a court of competent jurisdiction to be illegal, invalid, unenforceable, or otherwise contrary to law, the remaining provisions of these Terms will remain in full force and effect.

### Contact Us

You may contact Fresh with any question about the Service at [support@freshcomputers.com.au](mailto:support@freshcomputers.com.au). Fresh will make efforts to address your inquiry promptly.